



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF

Generoso Almazan,
Complainant

and

Ampere Automotive Corporation,
Respondent

)
)
)
)
)
)
)
)
)
)
)

CHARGE NO.: 2002 CF2278
EEOC NO.:
ALS NO.: 12047

RECOMMENDED ORDER AND DECISION

This matter, originally assigned to Administrative Law Judge Nelson E. Perez who has now left the Commission, comes before me pursuant to an order of default entered by the Commission against Respondent on March 26, 2003. A public hearing on damages only was held on July 21, 2003 at which Respondent did not appear. While Respondent was given an opportunity to participate in briefing this matter, it did not do so and Complainant waived the filing of any brief on his own behalf. This matter is now ready for decision.

Statement of the Case

Complainant was discharged from his employment with Respondent on February 24, 2002. The charge in this case was submitted to the Department of Human Rights on April 2, 2002. In it, Complainant alleged that Respondent discriminated against him on the basis of his ancestry, Hispanic, in violation of the Human Rights Act. Respondent failed to file a verified response to the charge and the Chief Legal Counsel for the Department sustained a notice of default, followed by an order affirming the default on March 10, 2003. In response to the petition of the Department, the Commission issued its order of default on March 26, 2003 as noted above.

Findings of Fact

1. Complainant, Generoso Almazan, filed his Charge No. 2002 CF2278 with the Illinois Department of Human Rights on April 2, 2002, alleging that Respondent, Ampere Automotive Corporation, subjected him to discrimination in employment due to his ancestry, Hispanic.

2. On March 26, 2003, the Commission entered an order declaring Respondent in default in accord with the petition filed by the Department of Human Rights on March 11, 2003.

3. Then, on April 7, 2003, Judge Perez entered an order scheduling a public hearing on June 9, 2003. However, because Complainant required an interpreter, the hearing could not be held on June 9th. With due notice to Respondent, the public hearing was rescheduled for July 21, 2003.

4. Finally, a public hearing on the issue of damages was held on July 21, 2003 at 9:30 a.m. at the Commission's office in Chicago.

5. Complainant was present *pro se* at the public hearing on February 7, 2003 and Respondent did not appear.

6. Complainant became unemployed from February 24, 2002 and has remained unemployed through the date of the public hearing. However, he does not seek reinstatement, so his award for back pay will end as of the date of this ROD. Relevant calculations based on this finding of fact are found below and are incorporated in these findings of fact.

7. Due to the loss of his employment, Complainant was required to pay medical expenses that otherwise would be covered by insurance.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accord with the default order entered on March 26, 2003, Respondent is liable for a violation of the provisions of the Illinois Human Rights Act that prohibit discrimination in employment based on ancestry.

4. Based on the default of Respondent and its failure to effectively dispute or oppose any of the requests made by Complainant with regard to an award for back pay and medical expenses, Complainant is entitled to an award for each of these elements of loss in order to be made whole.

Discussion

A. Damages

Back Pay -- The first element of damages to be considered is Complainant's request for back pay. Because he has been unemployed from the date of discharge to the present, he is entitled to receive back pay from the discharge date to the date of this recommended order. While the calculation of back pay is always somewhat speculative, the task is made even more difficult when a respondent has deliberately failed to provide information through the discovery process that would make the task more direct. It is the Commission's general principle that any ambiguity in this process be resolved in favor of a prevailing complainant due to the finding of liability against the respondent. Clark v. Human Rights Comm'n, 141 Ill.App.3d 178, 183, 490 N.E.2d 29, 95 Ill.Dec. 556 (1st Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way.

At the time of his termination from employment with Respondent, Complainant was receiving \$9.60 per hour for a 40-hour workweek, with an average of five hours per week of overtime at the rate of \$15.40 per hour (time-and-a-half). This is \$461.00 per week or \$1,997.67

per month. His total back pay is \$1,997.67 times the 21 months between the date of discharge and the date of this ROD, or \$41,951.67.

Loss of Medical Benefits -- Complainant was discharged after he returned from a hospitalization. Due to the discharge, he lost his medical insurance coverage for himself and his family both for that recent hospital stay and for the future. In his testimony at the public hearing, Complainant stated that his medical expenses included \$10,000.00 for doctors, \$30,000.00 for the hospital and \$3,000.00 for the medical expenses of his spouse, a total of \$43,000.00. In that Respondent was not present to contest this aspect of Complainant's damages, it will be recommended that this award include \$43,000.00 for the medical expenses incurred by Complainant due to the loss of his medical insurance. This element of the award should not be taken to imply that the level of proof available in this record would be sufficient to support a similar claim in a contested matter.

Emotional Distress -- The Complainant also requests compensation for the emotional distress he suffered due to the discriminatory behavior of Respondent in a "reasonable amount." He testified that the discharge caused him to "(lose) faith in regards to human rights" and that "he had never imagined that he would ever have to be in a situation like this." I find that a reasonable award to compensate Complainant for his emotional distress is \$3,000.00.

Attorney's Fee and Costs -- Complainant represented himself in this proceeding and no request for fees or costs has been submitted. No award for fees or costs will be entered.

Recommendation

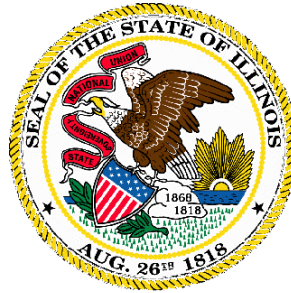
It is recommended that the default entered against Respondent be affirmed, that Respondent accordingly be found liable for a violation of the Human Rights Act as alleged in the charge, and that Complainant be awarded the following relief:

- A. That Respondent pay Complainant back pay in the gross amount of \$41,951.07 for the period February, 2002 through October, 2003;
- B. That Respondent pay Complainant interest on all elements of this award contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-

104(J)) and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules, to accrue until payment in full is made by Respondent;

- C. That Respondent pay to Complainant the amount of \$3,000.00 for emotional distress;
- D. That Respondent pay to Complainant the amount of \$43,000.00 for the medical expenses he incurred that would otherwise have been paid through his medical insurance;
- E. That any public contract currently held by Respondent be terminated forthwith and that Respondent be barred from participating in any public contract for three years in accord with Section 8-109(A)(1) and (2) of the Human Rights Act. 775 ILCS 5/8-109(A)(1) and (2).
- F. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees be referred to the Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent; and,
- G. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation.

HUMAN RIGHTS COMMISSION



ENTERED:

November 7, 2003

BY: _____
 DAVID J. BRENT
 ADMINISTRATIVE LAW JUDGE
 ADMINISTRATIVE LAW SECTION

Service List for Almazan #12047 as of 11/7/03:

Generoso Almazan
2725 North McVicker Avenue
Chicago, Illinois 60639

Deloris Smith
Human Resources Manager
Ampere Automotive Corporation
3509 West Addison Street
Chicago, Illinois 60618

Office of the General Counsel
Illinois Department of Human Rights
100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601